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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/712,855	11/14/2000	Cadir Batista Lee	09595-004002	3728
26181	7590	02/24/2005	EXAMINER	
FISH & RICHARDSON P.C. 3300 DAIN RAUSCHER PLAZA MINNEAPOLIS, MN 55402			REVAK, CHRISTOPHER A	
			ART UNIT	PAPER NUMBER
			2131	

DATE MAILED: 02/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/712,855

Applicant(s)

LEE ET AL.

Examiner

Christopher A. Revak

Art Unit

2131

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 23-33 is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☒ Claim(s) 6-8, 13-15, and 20-22 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1-33 have been considered but are moot in view of the new ground(s) of rejection.

Specification

2. The disclosure is objected to because of the following informalities:

The applicant has filed an amendment on January 24, 2002 that claims priority under 35 U.S.C. 120 to U.S. Patent 6,163,859 which appears to be a continuation application. The specification needs to be amended according to indicate the status thereof.

Appropriate correction is required.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 2-22 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-21 of U.S. Patent No. 6,163,859. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 2-22 of the instant application are envisioned by patent claims 1-21 in that claims 1-21 of U.S. Patent 6,163,859 contains all the limitations of claims 2-22 of the instant application. Claims 2-22 of the instant application therefore are not patentably distinct from the earlier patent claims, and as such, are unpatentable for obvious-type double patenting.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 4,5,11,12,18, and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by Griffith, U.S. Patent 6,330,687.

As per claims 4,11, and 18, Griffith teaches of a computer implemented method for archiving software components known as a RAID system (col. 1, lines 27-38, col. 5,

lines 23-27, and see title). An access controller performs RAID operations, or also known as direct, random access retrieval as is known by one of skill in the art, of data (software components) from the RAID system (vault)(col. 1, lines 27-38,47-49). Two single RAID systems (secondary vault) are coupled together (to the primary vault)(col. 1, lines 47-49 and as shown in Figure 1). A fault tolerant rollover system sequentially searches each vault for the presence of a target software component (col. 1, lines 27-38,47-49 and col. 5, lines 40-46).

As per claims 5,12, and 19, it is disclosed by Griffith that the secondary RAID system (vault) is ordered based on the accessibility of the RAID drives (vaults)(col.).

Allowable Subject Matter

7. Claims 2,3,9,10,16,17, and 23-33 are allowed.
8. The following is a statement of reasons for the indication of allowable subject matter:

As per claims 2,9, and 16, it was not found to be taught in the prior art of a post controller generating a unique key from a new component and optimizing storage if the unique key exists.

As per claims 3,10, and 17, it was not found to be taught in the prior art of a client coupled to a vault wherein the client has a physical software component residing at the client and the client generates a key from the physical software component. The examiner is interpreting the physical software components as is recited from the applicant's specification on page 7, lines 33-36 as "Each of the vaults includes sets of

catalogs which are indices of metadata files that represent the physical components of the software being published for the client.”

As per claims 23 and 26-33, the examiner has found the applicant's arguments to be persuasive as is recited in the remark section, page 16, last paragraph through page 17, second paragraph filed on October 12, 2004.

The examiner notes that claims 2,3,9,10,16, and 17 are allowable over the prior art of record, but are still rejected under obvious-type double patenting whereby a terminal disclaimer needs to be filed in order to overcome the double patenting rejection.

9. Claims 6-8,13-15, and 20-22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Shirasishi, U.S. Patent 6,330,687 is a general teaching of RAID systems.


Lee et al, U.S. Patent 6,163,859 is a related teaching by the applicant.

Lee et al, U.S. Patent 5,996,073 is a related teaching by the applicant.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher A. Revak whose telephone number is 571-272-3794. The examiner can normally be reached on Monday-Friday, 6:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ayaz Sheikh can be reached on 571-272-3795. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CR

February 19, 2005

Christopher Revak
AU 2131


2/19/05